

AMENDED IN SENATE JUNE 24, 2004

Senate Joint Resolution

No. 2

Introduced by Senator Figueroa

December 2, 2002

Senate Joint Resolution No. 2—Relative to ~~privacy~~ *health care*.

LEGISLATIVE COUNSEL'S DIGEST

SJR 2, as amended, Figueroa. ~~Privacy~~ *Health care*.

This measure would ~~respectfully request that the Congress of the United States exempt from preemption any state privacy law that provides greater protection to consumers than is, or will be, provided by federal law~~ *request Congress to enact and the President to sign an HMO Patient's Bill of Rights or alternative legislation expanding the rights of states. The measure would request the Governor to support that legislation and to lobby the Congress and the President in that regard.*

Fiscal committee: no.

- 1 ~~WHEREAS, It is the primary responsibility of the state to~~
2 *WHEREAS, In 1974 Congress passed the Employee Retirement*
3 *Income Security Act, now commonly known as ERISA, in order to*
4 *protect workers and guarantee the benefits provided to them by*
5 *employers; and*
6 *WHEREAS, California, under the provisions of Senate Bill 21*
7 *(Chapter 536 of the Statutes of 1999), provides patients in a health*
8 *maintenance organization (HMO) the ability to obtain*
9 *compensation from their HMOs when HMOs wrongfully deny*
10 *them care and when that wrongful denial causes harm such as*
11 *death, disability, chronic pain or illness, disfigurement, or lost*
12 *wages and employment; and*

1 WHEREAS, California and Texas led the nation in providing
2 patients with this remedy; and

3 WHEREAS, On June 21, 2004, the United States Supreme Court
4 ruled in *Aetna Health Inc. v. Davila* that ERISA completely
5 preempts any state laws that give HMO patients the ability to sue
6 their HMO for harms caused by the HMO's denial of care; and

7 WHEREAS, The ruling in *Aetna Health, Inc. v. Davila* places at
8 risk the provisions of Senate Bill 21 and the laws of 10 other states,
9 including Texas; and

10 WHEREAS, Under this ruling, HMOs will be the only type of
11 business exempted from responsibility for their wrongdoing, even
12 if the wrongdoing leads to the death or permanent disability of the
13 elderly or children, and no other business or entity of any kind
14 except the HMO industry is permitted by federal law to avoid
15 paying for the harms it causes; and

16 WHEREAS, The effect of this ruling will be to exempt HMOs
17 from liability when they make exactly the same kinds of decisions
18 that would cause a licensed health care provider to be held liable;
19 and

20 WHEREAS, Under the Supreme Court's ruling, those who work
21 for government (including state legislators, Members of Congress,
22 Governor Schwarzenegger, and the President) could all hold their
23 HMOs accountable for the harms caused by their wrongful denials
24 of care, but over one hundred million Americans who are employed
25 in the private sector could not; and

26 WHEREAS, This extraordinary exemption from liability is
27 against public policy, which generally seeks to hold parties
28 responsible for their actions and seeks to place on wrongdoers,
29 rather than taxpayers, the cost of their wrongdoing; and

30 WHEREAS, A policy that prohibits parties from being held
31 responsible for their actions promotes carelessness,
32 uncompensated harm, and, potentially, the loss of life; and

33 WHEREAS, Clear policies emphasizing accountability and
34 responsibility for harms caused are particularly critical in the
35 health care field in order to better ensure the public health and
36 safety; and

37 WHEREAS, It is now clear that states such as California and
38 Texas have little or no ability to ensure that HMOs, rather than the
39 taxpayers, pay for the costs of their wrongdoing, and must rely on



1 *the United States Congress to provide this protection; now,*
2 *therefore, be it*

3 *Resolved, by the Senate and Assembly of the State of California,*
4 *jointly, That the Legislature respectfully requests the Congress to*
5 *enact and the President to sign into law a meaningful and*
6 *enforceable HMO Patient's Bill of Rights that includes the ability*
7 *for HMO patients to hold their HMO legally responsible for harms*
8 *caused by their wrongdoing and that treats HMOs in the same*
9 *manner as all other businesses and individuals in that regard, or,*
10 *in the alternative, to enact and sign legislation to amend ERISA to*
11 *clearly authorize states to provide greater remedies than are*
12 *available under federal law if states wish to provide their citizens*
13 *with greater protections than federal law makes available; and be*
14 *it further*

15 *Resolved, That the Legislature calls upon Governor*
16 *Schwarzenegger no later than 30 days after the passage date of this*
17 *resolution to announce his administration's support for the right*
18 *of a California patient to obtain damages from his or her HMO*
19 *when the HMO wrongfully denies care and causes harm and to*
20 *pledge that he will lobby the Congress and the President for the*
21 *prompt enactment of such federal legislation; and be it further*

22 *Resolved, That the Secretary of the Senate transmit copies of this*
23 *resolution to the President and Vice President of the United States,*
24 *to the Speaker of the House of Representatives, and to each*
25 *Senator and Representative from California in the Congress of the*
26 *United States.*

27 ~~provide for the health, safety, and general welfare of its citizens;~~
28 ~~and~~

29 ~~WHEREAS, In California, this duty extends to the protection~~
30 ~~of individual privacy rights; and~~

31 ~~WHEREAS, Specifically, Section 1 of Article I of the~~
32 ~~California Constitution guarantees its citizens an inalienable right~~
33 ~~to privacy; and~~

34 ~~WHEREAS, In protecting this right, the state has enacted~~
35 ~~legislation in relation to privacy and similar issues, including, but~~
36 ~~not limited to, telemarketing and financial privacy, medical~~
37 ~~records, social security numbers, and the Internet; and~~

38 ~~WHEREAS, Unfortunately, as to those provisions that are more~~
39 ~~protective of consumer rights, they are, many times, preempted by~~
40 ~~less restrictive federal provisions; and~~

1 ~~WHEREAS, The solution to this problem is to memorialize the~~
2 ~~Congress of the United States, when enacting legislation in regards~~
3 ~~to privacy, to include provisions that exempt more stringent state~~
4 ~~laws from federal preemption; and~~

5 ~~WHEREAS, This solution is not a radical one, as the principle~~
6 ~~of states' rights has been espoused by important figures since the~~
7 ~~conception of the United States, such as by the framers of the~~
8 ~~Constitution of the United States, various presidents and justices,~~
9 ~~and the people alike; and~~

10 ~~WHEREAS, For instance, our founding fathers preserved~~
11 ~~states' rights by including the Tenth Amendment in the Bill of~~
12 ~~Rights; and~~

13 ~~WHEREAS, In relation, the great Ronald Reagan once stated:~~
14 ~~"All of us need to be reminded that the Federal Government did~~
15 ~~not create the States; the States created the Federal Government";~~
16 ~~and~~

17 ~~WHEREAS, Moreover, a recent United States Supreme Court~~
18 ~~decision, Federal Maritime Comm. v. South Carolina State Ports~~
19 ~~Auth. (2002) 535 U.S. 743, provides in pertinent part: "States,~~
20 ~~upon ratification of the Constitution, did not consent to become~~
21 ~~mere appendages of the Federal Government. Rather, they entered~~
22 ~~the Union with their sovereignty intact"; and~~

23 ~~WHEREAS, Congress has an opportunity to advance the~~
24 ~~premise that, indeed, the states are not mere appendages of the~~
25 ~~federal government, but, rather, are justified in protecting the~~
26 ~~inalienable rights of its citizenry; and~~

27 ~~WHEREAS, We note that this opportunity may soon avail itself,~~
28 ~~as the Fair Credit Reporting Act, 15 U.S.C. Sec. 1681 et seq.,~~
29 ~~prevents states from imposing any requirement or prohibition with~~
30 ~~respect to certain provisions of that act, unless that requirement or~~
31 ~~prohibition gives greater protection to consumers and is enacted~~
32 ~~after January 1, 2004; now, therefore, be it~~

33 ~~*Resolved by the Senate and Assembly of the State of California,*~~
34 ~~*jointly,* That the Legislature of the State of California respectfully~~
35 ~~requests that the Congress of the United States exempt from~~
36 ~~preemption any state privacy law that provides greater protection~~
37 ~~to consumers than is, or will be, provided by federal law; and be~~
38 ~~it further~~

39 ~~*Resolved,* That the Secretary of the Senate transmit copies of~~
40 ~~this resolution to the President and Vice President of the United~~

- 1 ~~States, to the Speaker of the House of Representatives, and to each~~
- 2 ~~Senator and Representative from California in the Congress of the~~
- 3 ~~United States.~~

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